

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

DRESSER-RAND COMPANY,

Plaintiff,

-against-

PETRÓLEOS DE VENEZUELA, S.A. and
PDVSA PETRÓLEO, S.A.,

Defendants.

Docket No.: 1:19-cv-002689-LLS

**DECLARATION OF ROBIN
MUIR IN SUPPORT OF
DEFENDANT PETRÓLEOS
DE VENEZUELA, S.A.'S
MOTION FOR ISSUANCE
OF LETTERS OF REQUEST**

Robin L. Muir submits this declaration under penalty of perjury, which may include fine or imprisonment:

1. I am a senior associate of Hogan Lovells US LLP, counsel for defendant Petróleos de Venezuela, S.A. (“PDVSA”) in the above-captioned action. I respectfully submit this declaration in support of PDVSA’s motion for issuance of letters of request for international judicial assistance, in the forms annexed hereto as Exhibits 1-3,¹ to obtain discovery from non-party, foreign entities.

2. In order to prepare for trial on this issue, PDVSA, which continues to lack access to its own documents and personnel, requires certain discovery that is necessary to present trial evidence on its impossibility defense. Specifically, PDVSA attempted to make payment on the Note, but its payments were rejected by the banks handling the payment due to sanctions issues. PDVSA requires documents and testimony from the banks that handled attempted transfers from PDVSA to Dresser-Rand in order to establish the facts surrounding the rejection of PDVSA’s attempted payments and the reasons therefor.

¹ Annexed hereto as Exhibit 1 is a form letter of request to the Central Authority of the United Kingdom to obtain discovery from Dinosaur Merchant Bank Ltd; as Exhibit 2 is a form letter of request to the Central Authority of China to obtain discovery from China CITIC Bank; as Exhibit 3 is a form letter of request to the Central Authority of Germany to obtain discovery from Commerzbank AG’s Munich branch.

3. Among other discovery, PDVSA served document subpoenas on the banking institutions involved in the attempted payment transactions by PDVSA:

- a. On June 15, 2020, we attempted to serve a subpoena on Dinosaur Merchant Bank Ltd. (“Dinosaur Merchant”), a correspondent bank that is believed to have rejected PDVSA’s January 2018 payment attempt, in New York at 470 Park Avenue South, 9th Floor, New York, NY 10016.
 - b. On June 15, 2020, we attempted to serve a subpoena on China CITIC Bank (“China CITIC”), the bank that originated PDVSA’s first two payments to Dresser-Rand and its November 2017 payment attempt, in New York at 410 Park Avenue, 18th Floor, New York, NY 10022.
 - c. On August 20, 2020, we served a subpoena on Commerzbank AG (“Commerzbank”), the holder of the account that Dresser-Rand provided as an alternative to which PDVSA could make payments under the Note, at its New York branch.
 - d. On June 25, 2020, we served a subpoena on Deutsche Bank Trust Co Americas, a correspondent bank that rejected PDVSA’s November 2017 payment attempt due to “internal policy.”
 - e. On June 30, 2020, we served a subpoena on Citibank N.A., the holder of the account that Dresser-Rand designated for payments under the Note, for documents regarding payments and attempted payments by or on behalf of PDVSA to Dresser-Rand’s designated account.
4. On June 18, 2020, outside counsel for Dinosaur Financial Group, LLC informed us that we had served the subpoena on Dinosaur Financial Group, LLC, which is a separate

entity from Dinosaur Merchant, which is located in London. In an effort to avoid motion practice, on July 1, 2020, we served the subpoena on Dinosaur Merchant in London and requested a response by July 24, 2020. To date, no response has been received.

5. On July 17, 2020, Paul Reich, Head of Compliance of China CITIC Bank International informed us that we had served the subpoena on China CITIC Bank International, which is a separate entity from China CITIC Bank, which is located in China.

6. Having learned that PDVSA's attempts to serve subpoenas on Dinosaur Merchant and China CITIC under Rule 45 were unsuccessful, on August 13, 2020, PDVSA filed a letter requesting permission from the Court to move for issuance of letters of request for international judicial assistance. (Dkt. No. 85.) On August 17, 2020, Dresser-Rand filed a letter stating that it does not object to PDVSA's motion as long as it does not impact the parties' stipulated discovery schedule.² (Dkt. No. 86.) On August 17, 2020, this Court granted PDVSA permission to move for issuance of letters of request, without the need of a pre-motion conference. (Dkt. No. 87.)

7. On August 25, 2020, we met and conferred with Commerzbank regarding its search for responsive documents. Although Commerzbank has a branch in New York, that branch does not have access to, or control over, the documents and records of its branch in Munich, Germany, where Dresser-Rand's account is located. Thus, PDVSA also moves for

² On August 26, 2020, the parties agreed to modify their stipulated discovery schedule as follows:

Existing Deadlines	New Deadlines
Sept. 4 – Completion of fact discovery	Oct. 9 – Completion of fact discovery
Oct. 2 – Expert Reports due	Oct. 27 – Expert Reports due
Nov. 6 – Completion of expert discovery	Nov. 13 – Completion of expert discovery
Nov. 20 – Plaintiff's proposed findings of fact	Nov. 25 – Plaintiff's proposed findings of fact
Dec. 4 – Defendant's proposed findings of fact	Dec. 9 – Defendant's proposed findings of fact
Dec. 18 – Plaintiff's reply findings of fact	Dec. 22 – Plaintiff's reply findings of fact
Jan. 18 – Filing of pre-trial order and pre-trial briefs	Jan. 18 – Filing of pre-trial order and pre-trial briefs

issuance of a letter of request to the Central Authority of Germany to obtain discovery from Commerzbank's Munich branch.

Dated: August 27, 2020

/s/ Robin L. Muir

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